

Equal Opportunity for Individuals with Disabilities

Rehabilitation Act of 1973, as amended (29 USC §793; P.L. 93-112, Section 503; 41 CFR Chapter 60, Parts 60-741 to 60-742)

Who is Covered

Section 503 of the Rehabilitation Act of 1973, as amended, requires employers with federal contracts or subcontracts that exceed \$10,000, and contracts or subcontracts for indefinite quantities (unless the purchaser has reason to believe that the cost in any one year will not exceed \$10,000), to take affirmative steps to hire, retain, and promote qualified individuals with disabilities. The regulations implementing Section 503 make clear that this obligation to take affirmative steps includes the duty to refrain from discrimination in employment against qualified individuals with disabilities.

The following types of contracts and subcontracts are *exempt* from Section 503:

- Those not exceeding \$10,000;
- Those for work that is performed outside the U.S.; and
- Those with state or local governments, except for the specific government entity that participates in work on or under the contract.

The Deputy Assistant Secretary may grant a waiver from the requirements of Section 503 in the following circumstances:

- For specific contracts, subcontracts, or purchase orders, if special circumstances in the national interest require such an exemption;
- For facilities not connected to performance of the federal contract, upon the written request of the contractor, if certain conditions listed in the regulations are met. This type of waiver will terminate, at the very latest, two years after the date on which the waiver is granted, and earlier under certain specific circumstances; and
- Contracts and subcontracts involving national security, if the head of the contracting agency determines both that (1) the contract is essential to national security, and (2) noncompliance with a particular requirement of the Executive Order or the regulations with respect to the process of awarding the contract is essential to national security.

Under Section 503 and its implementing regulations, an “individual with a disability” means a person who (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such impairment, or (3) is regarded as having such an impairment.

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A “qualified individual with a disability” means a person with a disability who satisfies the job-related requirements of the employment position he or she holds or is applying for, and who, with or without reasonable accommodation, can perform the essential job functions of that position.

Additional information on the definitions of “individual with a disability” and “qualified individual with a disability” can be found in several of the Enforcement Guidances published by the Equal Employment Opportunity Commission (EEOC). These Guidances may be found on the EEOC’s Enforcement Guidances and Related Documents Web page at www.eeoc.gov/policy/guidance.html.

Basic Provisions/Requirements

Under Section 503 and its implementing regulations, covered employers with federal contracts or subcontracts must take affirmative steps to employ qualified individuals with disabilities. This obligation covers the full range of employment and personnel practices, such as recruitment, hiring, rates of pay, upgrading, and selection for training. All covered contractors and subcontractors must also include a specific equal opportunity clause in each of their nonexempt contracts and subcontracts. The regulations provide the required language for this clause.

In addition, Section 503 and its regulations require covered federal contractors and subcontractors to make reasonable accommodations for the known physical or mental limitations of qualified individuals with disabilities, unless providing an accommodation would create an undue hardship. Furthermore, covered contractors and subcontractors are required to take all necessary actions to ensure that no one attempts to intimidate or discriminate against any individual for filing a complaint or participating in a proceeding under Section 503.

Under Section 503, each employer that has both (1) a federal contract or subcontract of \$50,000 or more, and (2) 50 or more employees, must prepare, implement, and maintain a written affirmative action program covering each of its establishments. The employer must review and update the program annually and must make it available for inspection by any employee or applicant for employment, as well as by the Office of Federal Contract Compliance Programs (OFCCP) within the Department of Labor’s Employment Standards Administration. The program may be integrated with, or kept separate from, any other affirmative action program the employer is required to prepare.

Employee Rights

Employees of and applicants for employment with a covered contractor or subcontractor have the right to file a complaint with OFCCP if they believe that a federal contractor or subcontractor has discriminated against them on the basis of a disability. Anyone may call OFCCP with a question about interpreting the regulations, filing a complaint, or any other related matter. The main telephone numbers for OFCCP’s national offices are 202–693–0101 and 202–693–1308 (TTY). Additional telephone numbers are located on OFCCP’s Office Contact Web page at www.dol.gov/esa/contacts/ofccp/ofccpkey.htm.

Compliance Assistance Available

More detailed compliance assistance information, including copies of explanatory brochures and regulatory and interpretative materials, may be obtained from the

OFCCP Web site (www.dol.gov/esa/ofccp/) or by contacting OFCCP's local offices (www.dol.gov/esa/contacts/ofccp/ofcpkeyp.htm). Further assistance is available from OFCCP's Toll-Free Help Desk at 1-800-397-6251.

Penalties/Sanctions

OFCCP investigates for violations of Section 503 either through compliance evaluations or in response to complaints. If a violation is found, OFCCP may ask the federal contractor or subcontractor to enter into conciliation negotiations. If conciliation efforts fail, OFCCP may initiate an administrative enforcement proceeding by issuing an administrative complaint against the contractor or subcontractor.

If OFCCP files an administrative complaint, the contractor or subcontractor has 20 days to request a review by an Administrative Law Judge (ALJ), who hears the case and recommends a decision. If the contractor or subcontractor is dissatisfied with the ALJ's decision, it may appeal the decision to the Department of Labor's Administrative Review Board. The Board issues the final decision, whether or not there is an appeal.

If the Board finds that a violation of Section 503 has occurred, it may order the contractor or subcontractor to provide appropriate relief, which may include back pay and benefits, and restoration of employment status, for the victim(s) of discrimination. Depending on the circumstances, violations also may result in cancellation, suspension, or termination of contracts, withholding of progress payments, and debarment.

If the contractor or subcontractor is dissatisfied with the Board's decision, it may appeal that decision to the federal courts.

Relation to State, Local, and Other Federal Laws

Section 503 and its implementing regulations apply only to the specific state or local government entities that participate in work on or under a federal contract or subcontract. This coverage is narrower than that which applies to employers in the private sector.

Section 107(b) of the Americans With Disabilities Act of 1990 (ADA) required agencies with enforcement responsibilities under the Rehabilitation Act of 1973 (e.g., OFCCP) and under Title I of the ADA (i.e., the Equal Employment Opportunity Commission) to develop procedural regulations to ensure that complaints filed under these laws are addressed in a manner that avoids duplication of effort and prevents application of inconsistent or conflicting standards for the same requirements under the two laws. These regulations are found at 41 CFR Part 60-742.